

# **Administrative Rules for Mortgage Brokers, Mortgage Lenders, and Mortgage Loan Originators**

(Effective: February 12, 2010)

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) "Another person involved in the transaction" means a licensee, the borrower's employer, the lender, the real estate agent, or other persons or entities allowed by the lender guidelines.

(2) "Employing" means the entity for whom the individual works is liable for withholding payroll taxes pursuant to Title 26 of the United States Code.

(3) "Initiation of an investigation" means any administrative, civil, or criminal proceeding initiated by a state, municipal or federal governmental entity, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Agency and such proceeding is evidenced by a written formal complaint or charge filed by the investigating agency.

(4) "Material change" means:

- (a) a change in the physical location of the principal location and/or branch office;
- (b) a change in the phone number;
- (c) a change in the nature of the business;
- (d) a change in the board of directors or the principal officers;
- (e) a change in the share ownership of the company of 10% or more;
- (f) the acquisition or disposition of another company;
- (g) any civil action involving fraud or dishonesty has been filed against the licensee;
- (h) any criminal charge has been filed against the licensee; or
- (i) any change which would have authorized the department not to issue a license, if it had occurred before licensure.

(5) "Restitution" may include, but is not limited to, refunds of any or all the fees paid directly or indirectly by the borrower.

(6) "Table funding" means the closing of a loan naming a mortgage broker, a mortgage broker's business entity or a loan originator as the lender on the mortgage loan note, which note is then sold within three business days of closing to another party.

(7) "Termination" means separation from employment for any reason. The term includes the circumstance of a loan originator when the employing entity's Montana license is suspended, revoked, or surrendered even though the loan originator may continue to be employed by the entity in another capacity or in another state.

(8) "Work in a related field" or "in a related field" means:

- (a) for a designated manager, three years:
  - (i) as a mortgage broker, or a branch office manager of a mortgage broker business;
  - (ii) as a mortgage banker, or responsible individual or branch manager of a mortgage banking business;
  - (iii) as a mortgage loan officer;

- (iv) as a branch manager of a mortgage broker or lender;
- (v) as a mortgage loan originator;
- (vi) as a state or federal regulator who examines compliance of residential mortgages of state or federally chartered financial institutions; or
- (vii) as a mortgage loan originator licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department; and
- (b) for a mortgage loan originator, six months:
  - (i) as a loan originator in a mortgage broker business;
  - (ii) as a loan originator in a mortgage banking business;
  - (iii) as a mortgage loan officer;
  - (iv) as a mortgage loan originator licensee in another state where the licensing standards are substantially similar to those in this state, as determined by the department;
  - (v) as a mortgage loan processor;
  - (vi) as a mortgage loan closing agent; or
  - (vii) as a state or federal regulator who examines compliance of residential mortgages of state or federally chartered financial institutions.

AUTH: 32-9-125, 32-9-130, MCA

IMP: 32-9-109, 32-9-116, 32-9-117, 32-9-122, 32-9-123, 32-9-125, 32-9-133,  
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#### 2.59.1702 PROOF OF EXPERIENCE

(1) Satisfactory proof of experience is:

- (a) copies of W-2 or 1099 tax forms verifying employment; or
- (b) copies of paystubs.

AUTH: 32-9-130, MCA

IMP: 32-9-108, 32-9-109, MCA

2.59.1703 TRANSFER OF LOAN ORIGINATOR LICENSE (1) Transfer of an individual mortgage loan originator license must be approved by the department. To transfer an individual mortgage loan originator license, the individual mortgage loan originator shall obtain a relocation application from the department. The completed relocation application must be accompanied by a nonrefundable processing fee of \$50.

(a) If a license is not transferred within six months and has been canceled, a complete new application with all required information must be submitted along with the appropriate new application fees and supporting documentation.

(b) If the lapse in employment occurs over a renewal period, the individual mortgage loan originator license must be renewed as required by 32-9-117, MCA, to qualify for a transfer of the license. The relocation six-month time frame would remain in effect and would be from the date of termination from the previous licensed entity.

(2) If an individual mortgage loan originator is terminated by a mortgage broker or lender, and within six months is re-employed by the same mortgage broker or lender, a request for reinstatement form must be filed with the department. The form is

available from the department. There is a \$10 processing fee for reinstatement. If the break in employment occurs over a renewal period, the individual mortgage loan originator license must be renewed as required by 32-9-117, MCA, to qualify for reinstatement. The six-month time frame would remain in effect and would be from the date of termination.

AUTH: 32-9-130, MCA

IMP: 32-9-116, 32-9-117, MCA

2.59.1705 CONTINUING EDUCATION PROVIDER REQUIREMENTS (1) A licensee shall receive credit for participation in a continuing education course if it is presented by a provider approved by the department and the department has approved the continuing education program pursuant to this rule.

(2) To receive approval of a continuing education course, the course provider must file an application with the department, which includes, but is not limited to the following items:

(a) course brochures, outlines, schedules, lesson plans, visual presentations, and course description (including a breakdown of time spent on each topic);

(b) a complete list of all examiners or instructors for the course, including their qualifications and experience with teaching courses similar to the course submitted for approval;

(c) a complete set of the curriculum materials. Materials will be retained by the department. Electronic format is acceptable;

(d) company history;

(e) sample course certificate of completion which must include, at a minimum;

(i) company name;

(ii) date of course;

(iii) course title;

(iv) instructor's signature;

(v) licensee's name; and

(vi) licensee's license number;

(f) list of other states in which approval to provide similar education is held; and

(g) a satisfactory timing method to properly monitor licensee's attendance and attention for the approved hours of the course.

(3) All instructors must have a minimum of five years of experience working as a mortgage broker, loan originator, mortgage banker, or work in a related field.

(4) The provider must submit, within 15 days of the end of the course, a class roster of licensees who successfully completed the course.

(5) Courses must reflect the activities performed by licensees and must provide licensees with a basic knowledge of and competency in any of the following:

(a) the following federal regulations:

(i) Real Estate Settlement Procedures Act;

(ii) Truth in Lending Act;

(iii) Equal Credit Opportunity Act;

(iv) Fair Credit Reporting Act;

(v) Fair Housing Act;

- (vi) Home Mortgage Disclosure Act;
- (vii) Gramm-Leach-Bliley Act; or
- (viii) the regulations promulgated pursuant to these acts;
- (b) ethics in the mortgage industry;
- (c) features of various loan products;
- (d) state and federally required disclosures;
- (e) the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act;
- (f) Administrative Rules of Montana Title 2, chapter 59, subchapter 17; or
- (g) other state and federal laws applicable to the mortgage broker industry.
- (6) Approved courses may be offered through the Internet or through a classroom setting in which teachers and participants are physically present for the teaching of a course. Correspondence or mail courses will not be accepted.
- (7) The provider shall file an application with the department that includes a copy of examinations to be used, if any, in determining satisfactory comprehension of the contents of the course and the grading scale to be used. Any new or revised courses, examinations, or grading scales to be used shall be submitted to the department for approval at least 60 days prior to use. Course materials may be submitted in electronic format. The department will consider continuing education disseminated by written or electronic means, including by the internet.
- (8) The department shall review applications filed and determine whether to approve or deny the proposed provider. If the department approves the course or provider, the department shall issue a certificate of approval that will be effective until NMLS approves the continuing education courses and providers.
- (9) The department shall provide a list of approved continuing education providers.
- (10) A course provider that desires to renew the certificate of approval must apply to the department and file the items required in (2) no later than 60 days before the certificate expires.
- (11) The department may audit an approved course at any time. If the course provider has not complied with the requirements of this rule, the department may suspend or terminate the approval and require the surrender of the certificate of approval.
- (12) The department may deny, revoke, suspend, or terminate approval of any provider or individual course upon a finding that:
  - (a) any provider officer or employee who has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions for any purpose other than instruction;
  - (b) during any six-month period, fewer than 50% of the provider's program students taking the examination for the first time achieve a passing score;
  - (c) the provider failed to comply with any provision of this rule;
  - (d) the provider fails to take reasonable steps to ensure that the licensee spends the allotted hours in the course; or
  - (e) the provider has not conducted at least one continuing education program during the preceding 24-month period.

(13) The provider is entitled to a hearing on the denial, suspension, or revocation held under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. The provider shall request a hearing within ten days of the date the notice of findings is sent to them. The notice shall be served on the provider at its last known address by certified mail.

(14) A provider shall designate one person as its contact person who shall be available to the department during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.

(15) Providers shall not use any words, symbols or other means to indicate that either the provider or a program has received the department's approval unless such approval has been issued and remains in effect.

(16) The fee for review of an initial and biennial education provider application is \$100 for the application fee and \$50 for each continuing education credit hour requested. All fees are nonrefundable and must be submitted with the application.

(17) An education course relative to commercial lending, commercial loan brokering, or mortgage banking may not be used to satisfy continuing education requirements under this subchapter.

(18) An education provider shall maintain student records for three years.

(19) A continuing education course from another state shall satisfy the continuing education requirement if the department has approved the course for continuing education in this state.

AUTH: 32-9-130, MCA

IMP: 32-9-118, MCA

2.59.1706 SURETY BOND (1) The surety bond shall be issued by a surety company authorized to do business in the state of Montana. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the department. The entity name on the application and on the surety bond must match exactly. The bond shall be continuous and may be cancelled by the surety upon the surety giving 30 days written notice to the department of its intent to cancel the bond. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond.

(2) Remedies relating to the bond are cumulative and nonexclusive and do not affect any other remedy available at law.

AUTH: 32-9-130, MCA

IMP: 32-9-123, MCA

2.59.1707 REVOCATION, SUSPENSION, OR SURRENDER OF LICENSE

(1) A licensee may offer to surrender a license by delivering to the department

written notice of the offer of surrender. An offer of surrender or accepted surrender does not affect the licensee's civil or criminal liability for acts initiated or committed while licensed.

(2) The department may refuse to accept the offer of surrender of a license if:

(a) a final order has been issued in an enforcement action and the licensee has not fully complied with the order regardless of whether compliance is yet due;

(b) the licensee has violated, or is under investigation for a suspected violation of, the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act or any rule in this subchapter;

(c) there is an enforcement action or complaint pending against the licensee; or

(d) the licensee has not made arrangements satisfactory to the department regarding loans in process at the time of the offer of surrender.

(3) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(4) In the event of a revoked, suspended, or surrendered mortgage broker, mortgage lender, or loan originator license, no fees will be refunded by the department.

AUTH: 32-9-130, MCA

IMP: 32-9-126, MCA

#### 2.59.1708 TABLE FUNDING REQUIRES LICNSURE

(1) Any person not exempted from the Montana Mortgage Broker and Loan Originator Licensing Act under 32-9-104, MCA, who closes a mortgage loan naming themselves as the lender and who, within three days of closing, consummates sale of the mortgage loan note to another party, commonly known as "table funding" as defined in ARM 2.59.1701, must be licensed as a mortgage broker or loan originator.

AUTH: 32-9-130, MCA

IMP: 32-9-103, 32-9-108, MCA

2.59.1709 CONSUMER COMPLAINT PROCESS (1) A complaint form will be provided by the department. A complaint must be submitted in writing to the department. If the basis of the complaint relates to the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act, it will be investigated by the department or designated party.

AUTH: 32-9-130, MCA

IMP: 32-9-130, MCA

#### 2.59.1710 RECORDS TO BE MAINTAINED BY MORTGAGE BROKERS

(1) A mortgage broker shall create and retain a residential mortgage file. The residential mortgage file shall contain:

(a) a record of all cash, checks, or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose;

(b) applicant's name, date, name of person taking the application, HUD-1 Settlement Statement, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by state and federal law signed and dated by the borrower, and where applicable, signed and dated by the individual mortgage broker or loan originator;

(c) a record of any and all contact between the mortgage broker or loan originator and the borrower relating to the rate, terms, or conditions of the loan;

(d) a copy of the evidence of insurance or insurance binder as required by the lender;

(e) a copy of the statement from the investor authorizing the loan;

(f) a copy of the appraisal;

(g) a copy of the borrower's credit report;

(h) a copy of all documentation used to support the borrower's income as required by the lender;

(i) a copy of all documentation used to support the borrower's assets as required by the lender;

(j) a copy of the promissory note;

(k) a copy of the policy of title insurance commitment on the property securing the loan;

(l) a copy of the first three pages of the deed of trust and final Truth in Lending disclosure signed by the borrower; and

(m) copies of all uniform residential loan applications.

(2) A mortgage broker shall maintain a trust account records file showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker, showing at a minimum, check number, the payee, amount, date, and purpose of payment or deposit, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.

(3) A mortgage broker shall maintain a spreadsheet of all residential mortgage applications taken, including all applications that are pending, closed, withdrawn, denied, or cancelled. The spreadsheet shall contain, at a minimum:

(a) the first and last name of the borrower(s);

(b) the property address (street, city, state, and zip code);

(c) the phone number of the borrower(s);

(d) the initial application date;

(e) the date the credit report was requested for the borrower(s);

(f) the loan amount;

(g) the status of the loan (pending, closed, withdrawn, cancelled, denied);

(h) the total fees received indirectly or directly by the mortgage broker at the closing of the loan;

(i) the total yield spread premium received by the mortgage broker at the closing of the loan; and

(j) the name of the individual mortgage loan originator who originated the loan.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-124, 32-9-125, MCA

#### 2.59.1714 FAILURE TO CORRECT DEFICIENCIES

(1) In addition to all other enforcement actions allowed by Montana law, the department may suspend or revoke a license pursuant to Title 2, chapter 4, part 6, MCA, of an entity that does not correct the deficiencies found by the department after an examination and within the time granted by the department.

AUTH: 32-9-130, MCA

IMP: 32-9-130, 32-9-133, MCA

#### 2.59.1716 COSTS IN BRINGING THE ADMINISTRATIVE ACTION

(1) Costs in bringing the administrative action as used in 32-9-133, MCA, shall include:

- (a) examiner time charges;
- (b) department legal counsel time charges;
- (c) administrative law judge charges;
- (d) court reporter costs;
- (e) transcription fees;
- (f) document preparation fees;
- (g) other hearing costs;
- (h) costs of subpoenaing documents;
- (i) any other cost incurred by the department in bringing the action; and
- (j) travel costs.

AUTH: 32-9-130, MCA

IMP: 32-9-133, MCA

#### 2.59.1717 SCHEME TO DEFRAUD OR MISLEAD

(1) For purposes of 32-9-124, MCA, a scheme to defraud or mislead a borrower, a lender, or any other person shall include but is not limited to:

- (a) misstating a borrower's income, assets, obligations, employment status, credit history, or financial resources, or the borrower's equity in the dwelling which secures repayment of the loan to a lender;
- (b) stating to a lender, or more than one lender, that a borrower intends to use more than one property as a primary residence;
- (c) charging or accepting any fees in excess of fees that have been or will be remitted to third parties; and
- (d) failing to disburse funds in accordance with any commitment or agreement with the borrower.

AUTH: 32-9-130, MCA

IMP: 32-9-124, MCA

2.59.1718 LICENSE RENEWALS FOR MORTGAGE LENDERS LICENSED AS OF JULY 1, 2009 - TEMPORARY LICENSES (1) A mortgage lender who held a valid license as a Montana residential mortgage lender as of July 1, 2009, and who applies for renewal of the license is eligible for a temporary license as provided in this rule.



(2) The term of the temporary license issued to a mortgage lender is from the date of issuance of the license until the earlier of:

(a) the granting of an unconditionally approved license status to the lender by Montana through the National Mortgage Licensing System (NMLS); or

(b) April 1, 2010.

(3) Mortgage lender applications for a temporary license must be submitted to the department by September 1, 2009, in order to assure the issuance of a temporary license to qualified renewal applicants before their current licenses expire on September 30, 2009. An application may be submitted after September 1, 2009, but if it cannot be processed in time for issuance of a temporary license by September 30, the renewal applicant's authority to engage in the business of mortgage lending expires on September 30 and incidences of unlicensed mortgage lender activity will be prosecuted by the department.

(4) An application for a temporary license must be submitted on a form prescribed by the department. Each mortgage lender shall license at least one main office and all branch offices at which Montana residential mortgage loans are originated. Each office must have a designated manager.

(5) The nonrefundable fee for a temporary mortgage lender license is \$375 for the main office and \$125 for each branch office.

(6) For each entity seeking temporary licensure as a mortgage lender, each of the persons listed in 32-9-113, MCA, shall submit an affidavit in a form prescribed by the department swearing or affirming that they meet the requirements of 32-9-120(1)(a), (b), (c), and (g), MCA, as of the date of application.

(7) If an applicant for a temporary license does not maintain a physical office in Montana, the applicant must comply with 32-9-128, MCA.

AUTH: 32-9-114, MCA

IMP: 32-9-102, 32-9-105, 32-9-113, 32-9-120, 32-9-123, MCA

2.59.1719 NEW APPLICANTS FOR A MORTGAGE LOAN ORIGINATOR LICENSE - TEMPORARY LICENSES (1) An individual who does not hold a valid license as a Montana residential mortgage loan originator or mortgage broker as of July 1, 2009, may apply for a temporary license as provided in this rule on a form prescribed by the department.

(2) The term of the temporary license issued to a mortgage loan originator is from the date of issuance of the license until the earlier of:

(a) the granting of an unconditionally approved license status by Montana to the mortgage loan originator through the NMLS; or

(b) April 1, 2010.

(3) The nonrefundable fee for a temporary mortgage loan originator license is \$300.

(4) To be granted a temporary license, a mortgage loan originator applicant shall meet the requirements in 32-9-120(1)(a), (b), (c), (d), and (g), MCA.

(5) An applicant for a temporary mortgage loan originator license shall submit the information and documentation required by 32-9-127(1)(a), (b), and (c), MCA, to the department rather than to the NMLS.

(6) If an applicant for a temporary mortgage loan originator license does not maintain a physical office in Montana, the applicant shall comply with 32-9-128, MCA.

AUTH: 32-9-114, MCA

IMP: 32-9-102, 32-9-105, 32-9-120, 32-9-127, 32-9-128, MCA

2.59.1720 NEW APPLICANTS FOR A MORTGAGE BROKER OR MORTGAGE LENDER LICENSE - TEMPORARY LICENSES (1) An entity that did not hold a valid license as a Montana residential mortgage lender or Montana mortgage broker as of July 1, 2009, may apply for a temporary license as provided in this rule on a form prescribed by the department.

(2) Each entity shall license at least one main office and all branch offices at which Montana residential mortgage loans are originated. Each office must have a designated manager.

(3) The term of the temporary entity license is from the date of issuance of the license until the earlier of:

(a) the granting of an unconditionally approved license status by Montana to the entity through the NMLS; or

(b) April 1, 2010.

(4) The nonrefundable fee for a temporary mortgage broker license is \$375 for the main office and \$187.50 for each branch office. The nonrefundable fee for a temporary mortgage lender license is \$562.50 for the main office and \$187.50 for each branch office.

(5) For each entity seeking temporary licensure as a mortgage lender or broker, each of the persons listed in 32-9-113, MCA, shall submit the information and documentation required by 32-9-127(1)(a), (b), and (c), MCA, to the department rather than to the NMLS.

(6) For each entity seeking temporary licensure as a mortgage lender or broker, each of the persons listed in 32-9-113, MCA, shall meet the requirements in 32-9-120(1)(a), (b), (c), and (g), MCA.

(7) Applicants shall submit proof of compliance with the requirements of 32-9-123, MCA.

(a) Entities that elect to purchase a surety bond shall purchase a surety bond for \$50,000 in order to receive a temporary license.

(b) If an applicant qualifies for the net worth requirement in lieu of surety bond, the entity shall comply with 2.59.1721 through 2.59.1723.

(8) If an applicant for a temporary license does not maintain a physical office in Montana, the applicant shall comply with 32-9-128, MCA.

AUTH: 32-9-114, MCA

IMP: 32-9-102, 32-9-105, 32-9-113, 32-9-120, 32-9-123, 32-9-127, 32-9-128, MCA

2.59.1721 NET WORTH REQUIREMENT FOR MORTGAGE BROKERS (1) If a mortgage broker chooses to utilize the net worth requirement in lieu of a surety bond,

the mortgage broker shall maintain an adjusted net worth of assets acceptable to the department of the following amounts:

- (a) \$250,000 based on a loan production of less than \$50 million per year;
- (b) \$500,000 based on a loan production of \$50 million but less than \$100 million per year;
- (c) \$1 million based on a loan production of more than \$100 million per year.
- (2) The mortgage broker shall maintain liquid assets of 20% of its adjusted net worth or \$50,000, whichever is less.
- (3) Liquid assets are cash and cash equivalents.
  - (a) Cash includes cash on hand, checking accounts, savings accounts, certificates of deposit (net of any early withdrawal penalty), and other cash equivalents with a federally-insured financial institution.
  - (b) Cash equivalents are readily marketable assets. Cash equivalents include but are not limited to:
    - (i) United States government securities at market value; and
    - (ii) stocks and bonds actively traded on a national United States security exchange with certificates issued in the name of the mortgage broker. These assets will be accepted at 90% of their 52-week low, as reflected at the time of submission of the audit.
  - (c) To be considered a liquid asset, the cash or cash equivalent must not be restricted or otherwise reserved for any purpose other than the payment of a current liability.
  - (d) A line of credit or letter of credit is not a liquid asset. Loans held for resale by the mortgage broker are not considered liquid assets.
- (4) The computation of adjusted net worth is required for all mortgage brokers who utilize the net worth requirement, even if no loans were originated or serviced during the previous 12-month period. The required adjusted net worth must be maintained throughout the year. When the mortgage broker is a parent or a subsidiary of a parent, the adjusted net worth computation must focus on the assets and liabilities of the individual entity with the net worth requirement, not the consolidated adjusted net worth of both entities.
- (5) In calculating the adjusted net worth, the assets listed in 2.59.1722 are unacceptable assets.

AUTH: 32-9-114, MCA

IMP: 32-9-123, MCA

2.59.1722 UNACCEPTABLE ASSETS (1) The following are unacceptable assets and may not be used in the computation of adjusted net worth:

- (a) any asset or portion of an asset pledged to secure obligations of another mortgage broker, entity, or any person;
- (b) an asset due from a control person or ultimate equity owner of the mortgage broker, from a related entity, their family members, or a related entity in which the control person or ultimate equity owner or family member has a financial or managerial interest;
- (c) a business venture in an unrelated entity;

(d) the portion of an investment that reflects the ownership interest of the mortgage broker in a joint venture, affiliate, and/or other related entity which is carried at a value greater than equity, as adjusted. "Equity as adjusted" means the book value of the related entity reduced by the amount of unacceptable assets carried by the related entity;

(e) any intangible asset, such as goodwill, covenants not to compete, franchise fees, organizational costs, value placed on insurance renewals, or value placed on property management contract renewals;

(f) the value of any servicing contract not determined in accordance with Statement of Financial Accounting Standards (SFAS) No. 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities;"

(g) any asset not readily marketable and for which appraised values are very subjective. Examples include, but are not limited to, antiques, artwork, and gemstones;

(h) any amount in excess of the estimated realizable or recovery value of mortgages in foreclosure, constructions loans, or property acquired through foreclosure based on the value of the appraisal at the time of foreclosure reduced by taxes, insurance, expenses of sale, and improvements to the property;

(i) any asset that is principally used for the personal enjoyment or benefit of a control person or ultimate equity owner and not for normal business purposes. This includes automobiles and personal residences. "Principally used" means that any other use of the property must be solely incidental;

(j) that portion of contributed property, not otherwise excluded, in excess of the value as of the date of contribution determined by an independent appraiser;

(k) notes that have been 60 days or more delinquent in payments two or more times in the past two years or accounts receivable that are more than 30 days past due;

(l) foreign securities which are not traded on a United States security exchange;

(m) real property as follows:

(i) real property located outside the continental United States and its outlying areas;

(ii) real property that is a principal residence of a control person or ultimate equity owner;

(iii) real estate held for sale or investment if development will not start within two years from date of acquisition;

(iv) real property owned concurrently regardless of the form of cotenancy (including joint tenancy, tenancy by the entirety, and tenancy in common) except where all cotenants agree to act jointly; and

(v) life estates, leasehold estates, leasehold improvements, or future interests in real property;

(n) personal property;

(o) lines of credit or letters of credit; and

(p) speculative assets such as mineral rights.

AUTH: 32-9-114, MCA

IMP: 32-9-123, MCA

2.59.1723 PROOF OF NET WORTH (1) The applicant shall submit its most current certified public accountant-prepared audited financial statements for the period not more than 12 months prior to the submission of the application. The financial statements must be supplemented by a computation of adjusted net worth pursuant to this subchapter.

(2) All financial statements must be prepared in accordance with generally accepted accounting principals (GAAP). The audit must be performed in accordance with generally accepted auditing standards (GAAS) by a certified public accountant authorized to perform audits in this state. The audit must be complete, original, and contain the auditor's report on the audit firm's letterhead stationery.

(3) Values of real property must be supported by an appraisal within the previous 12 months by an independent appraiser with the correct certification and licensure to give an accurate appraisal of the value of the property.

(4) For an ongoing business concern, a full set of financial statements is required including:

- (a) balance sheet;
- (b) income statement;
- (c) cash flow statement;
- (d) retained earnings statement;
- (e) footnotes; and
- (f) auditor's report containing an unqualified (clean) opinion.

(5) If the applicant is a new company and has had no revenues or cash flow, the income statement and cash flow statement are not required.

AUTH: 32-9-114, MCA

IMP: 32-9-123, MCA

2.59.1724 RECORDS TO BE MAINTAINED BY MORTGAGE LENDERS (1) All licensees shall maintain and preserve financial records concerning business operations, transactions with customers, and escrow account transactions.

(2) Any books, accounts, or records required to be maintained by the department may be maintained in paper, electronic, or digital format approved by the department provided the records shall be made available to the department as required by the statutes and rules, and at the request of the department, the records shall be printed or transferred to a format that is usable by the department.

(3) A mortgage lender shall create and maintain the following records:

(a) copies of all disclosures required by 32-9-148, MCA;

(b) copies of all payroll records, including federal and state withholding tax forms, W-2s, and 1099 forms filed with the Internal Revenue Service by the licensee or its agent on behalf of individuals employed by the licensee or on behalf of individuals acting as independent contractors in the mortgage lending business;

(c) a general ledger and subsidiary records sufficient to produce, when requested by the department, an accurate monthly statement of assets and liabilities, and a cumulative profit and loss statement for the current operating year;

(d) all checkbooks, bank statements, deposit slips, and cancelled checks that pertain to the mortgage lending business of the licensee;

(e) supporting documentation for all expenses and fees paid by the mortgage lender on behalf of the customer; and

(f) copies of all credit report bills received from all credit reporting agencies for the most recent five-year period.

(4) Mortgage lenders shall maintain an employee file for each employee that contains all documents related to the hiring of the employee, including name, date of birth, position or title and responsibilities, starting date, and date and reason for termination of employees. For purposes of this rule, employee shall include employees, independent contractors, and consultants who are involved in loan origination, loan servicing, loan negotiations, investor solicitation, or who transact business with borrowers or lenders.

(5) Financial records must include, at a minimum:

(a) a record of all monies received from borrowers, such as a cash receipts journal, showing at least:

- (i) name of payor;
- (ii) date of receipt;
- (iii) amount received;
- (iv) purpose of receipt including identification of the loan to which it relates, if any; and

(v) disposition of all monies received including the date and place of deposit or, if not deposited, the date, name of the person who received the monies, and the manner in which the monies were transmitted;

(b) a sequential listing of all checks written for each bank account relating to the licensee's business, such as a cash disbursement journal, showing at least:

- (i) name of the payee;
- (ii) date of payment;
- (iii) amount of the payment; and
- (iv) purpose of the payment including identification of the loan to which it relates, if any;

(c) bank account activity source documents for every account maintained for the licensee's business including at least:

(i) receipted deposit tickets and if "less cash deposits" are made, an explanation of the use of the cash;

(ii) paid checks if available and if these items are truncated, a copy of a document authorizing the department to request and receive copies of processed items from the financial institution;

(iii) bank advices, including, but not limited to, debit and credit notices and overdraft notices; and

(iv) monthly or periodic statements;

(d) detail on wire transfers into or out of the account(s) including:

- (i) the name of the person who is the payor or payee;
- (ii) date;
- (iii) amount;
- (iv) purpose of receipt or payment; and
- (v) identification of the loan to which it relates, if any; and

(e) a record or file of all monies owed by the licensee, such as an accounts payable journal.

(6) Mortgage lenders shall maintain all borrower and investor complaints except complaints unrelated to borrower or investor transactions. Complaint files shall include:

(a) copies or originals of all written complaints by borrowers and investors maintained in a separate complaint file by the individual's name in alphabetical order;

(b) a copy of the response;

(c) copies of correspondence related to the complaints; and

(d) a written disposition of the complaint.

(7) Mortgage lenders shall maintain residential borrower files that must include:

(a) a copy of each loan application form;

(b) a copy of each executed fee agreement, if prepared;

(c) in the case of residential or single family loans, a borrower acknowledged statement that a loan interest rate will float;

(d) a copy of the executed lock agreement, if used. The lock agreement must specify at a minimum:

(i) the date of the agreement;

(ii) the file identification and property address;

(iii) the lock-in rate;

(iv) the lock expiration date;

(v) a disclosure that the lock may be subject to change if any of the loan factors change;

(vi) the loan type (fixed, adjustable rate mortgage, other); and

(vii) a disclosure that if the lock expires, the rate and points are subject to change;

(e) the term of the loan;

(f) the loan fee and discount, if any;

(g) copies of all good faith estimates prepared pursuant to Regulation X (24 C.F.R. 3500);

(h) a copy of the executed authorization to release credit information form;

(i) a copy of final credit report, or the report relied upon for the loan decision, if other than the final credit report, received on the borrower including documentation of borrower payment history;

(j) all documents relating to the credit, underwriting, and pricing decisions of each loan file irrespective of whether the application has been denied, approved, or withdrawn;

(k) all notes and comments by anyone working on the loan file;

(l) a copy of the truth in lending disclosure statements made pursuant to Regulation Z (12 C.F.R. 226);

(m) a copy of the final U.S. Housing and Urban Development (HUD) settlement statement;

(n) a copy of all denial letters;

(o) a copy of all appraisals; and

(p) a copy of all disclosures, handbooks, and pamphlets required by federal law.

(8) Advertising records must be maintained for five years following the last date of publication of the advertisement. All licensees shall maintain copies of:

(a) all printed advertising published in newspapers, magazines, newsletters, or other media designed for mass distribution; and

(b) scripts, or audio- and videotapes, for advertising broadcast on radio or television.

(9) Escrow account records must be maintained as follows:

(a) a licensee shall deposit all trust funds received from a client into the escrow depository and shall keep such funds in the escrow depository until the written escrow instructions agreed to by all parties have been fulfilled;

(b) a licensee shall not commingle any monies received from a client for deposit into an escrow account with personal funds of the licensee. For purposes of this rule, the following shall not constitute commingling of trust funds with personal funds provided the funds are removed from the trust account within 30 days:

(i) earned, but untransferred, interest income accruing to the licensee pursuant to a written agreement with the client; or

(ii) earned, but untransferred, fees due the licensee;

(c) every deposit into a neutral escrow depository shall be accompanied by a letter of transmittal that shall include a written notation of the file identification assigned to the transaction on whose behalf the deposit is made. Compliance with this rule may be satisfied when a licensee has attached a copy of the client's check to the letter of transmittal.

(10) With respect to mortgage loans for which a commitment has been issued but the loan has not yet closed and funded, each mortgage lender shall maintain a pipeline report or reports, updated on a monthly basis, that provides the following information, both by state and in the aggregate:

(a) total number and dollar amount of such loans;

(b) type of loan (i.e., purchase money, refinance, etc.);

(c) total number and dollar amount of all such loans having a locked-in interest rate and total number and dollar amount of such loans whose interest rate is not locked in;

(d) the date the commitment was issued; and

(e) any fees collected from the borrower up to the date of commitment by any party to the mortgage transaction.

(11) For each line of credit to the lender, a mortgage lender shall maintain a report, or equivalent documentation, updated monthly, listing:

(a) each advancement of funds from the line of credit that reflects the date of the advancement;

(b) the name of the borrower;

(c) the date that the mortgage loan closed; and

(d) the date the funds were forwarded to satisfy its obligation for the advancement from the line of credit.

(12) Each mortgage lender shall maintain a list, by state, of the closing agents or attorneys that it uses that contains, at a minimum, the name, address, and telephone number of the closing agent or attorney.

(13) Mortgage lenders shall maintain a mortgage loan application log showing:

(a) the first and last name of the borrower(s);

(b) the property address (street, city, state, and zip code);



- (c) the phone number of the borrower(s);
  - (d) the initial application date;
  - (e) the date the credit report was requested for the borrower(s);
  - (f) the loan amount;
  - (g) the status of the loan (pending, closed, withdrawn, cancelled, denied);
  - (h) the total fees received indirectly or directly by the mortgage lender at the closing of the loan;
  - (i) the total fees paid to the mortgage loan originator;
  - (j) the loan funding source;
  - (k) the service release premium; and
  - (l) the name of the individual mortgage loan originator who originated the loan.
- (14) For borrower loans that are funded directly or indirectly by investors who are individuals, the following must be maintained by the lender:
- (a) a copy of the written evidence of obligation and the instrument creating the investor's lien or assignment of the lien;
  - (b) a copy of documents evidencing that the instrument creating the lien or assignment has been recorded; and
  - (c) copies of guarantees, surety agreements, any recourse agreements or guarantees, and correspondence related to any statements made to the investor or any investment made by the investor.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-125, 32-9-145, MCA